

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FREDDIE PIERRELOUIS, a minor under 14 years  
of age by his Father and of Natural Guardian,  
EDDY PIERRELOUIS and EDDY PIERRELOUIS,  
Individually,

Docket No.: 08-CV-0123

Plaintiffs,

-against-

**ANSWER AND DEMAND  
OF TRIAL BY JURY**

ESTHER BEKRITSKY, M.D., GERSON GLUCK, M.D.,  
GAVIN JOFFE, M.D., ERIC SILVA, M.D., "JOHN"  
SILVERBERG, M.D. (first name being fictitious and  
unknown), FE MURPHY, M.D., MONSEY FAMILY  
MEDICALCENTER and GOOD SAMARITAN  
HOSPITAL MEDICAL  
CENTER,

Defendants.  
-----X

Defendants, ESTHER BEKRITSKY, M.D., GAVIN JOFFE, M.D., ERIC SILVA,  
M.D., and FE MURPHY, M.D., by their attorneys, MEISELMAN, DENLEA, PACKMAN,  
CARTON & EBERZ P.C., as and for their Verified Answer to the Complaint of plaintiffs,  
state as follows:

**THE PARTIES**

1. Defendants deny any knowledge or information thereof sufficient to form a  
belief as to the allegations set forth in paragraphs numbered "1", "3", "6", "8", "9", "10",  
and "11" of plaintiffs' Verified Complaint.

2. Defendants deny each and every allegation in the form alleged in  
paragraph number "2" of plaintiffs' Verified Complaint, except admits that at all times  
herein mentioned, the defendant ESTHER BEKRITSKY, M.D. was a physician duly

licensed by the State of New York.

3. Defendants deny each and every allegation in the form alleged in paragraph number "4" of plaintiffs' Verified Complaint, except admits that at all times herein mentioned, the defendant GAVIN JOFFE, M.D. was a physician duly licensed by the State of New York.

4. Defendants deny each and every allegation in the form alleged in paragraph number "5" of plaintiffs' Verified Complaint, except admits that at all times herein mentioned, the defendant ERIC SILVA, M.D. was a physician duly licensed by the State of New York.

5. Defendants deny each and every allegation in the form alleged in paragraph number "7" of plaintiffs' Verified Complaint, except admits that at all times herein mentioned, the defendant FE MURPHY, M.D. was a physician duly licensed by the State of New York.

**AS AND FOR A FIRST CAUSE OF ACTION  
MEDICAL MALPRACTICE**

6. Defendants repeat, reiterate, and reallege each and every response set forth in the Verified Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "12".

7. Defendants deny each and every allegation in the form alleged in paragraphs numbered "13", "14", "15", "16", "17", "18", "34", "35", "36", "37", "38", "44", "45", "46", "47", "48", "64", "65", "66", "67", and "68" of plaintiffs' Verified Complaint.

8. Defendants deny each and every allegation in the form alleged in paragraphs numbered "19", "20", "21", "22", and "23" of plaintiffs' Verified Complaint,

except admits that ESTHER BEKRITSKY, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

9. Defendants deny any knowledge or information thereof sufficient to form a belief as to the allegations set forth in paragraphs numbered "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "74", "75", "76", "76" [sic], "77", "78", "79", "80", "81", and "82", of plaintiffs' Verified Complaint.

10. Defendants deny each and every allegation in the form alleged in paragraph number "39", "40", "41", "42" and "43" of plaintiffs' Verified Complaint, except admits that GAVIN JOFFE, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

11. Defendants deny each and every allegation in the form alleged in paragraph number "49", "50", "51", "52" and "53" of plaintiffs' Verified Complaint, except admits that ERIC SILVA, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

12. Defendants deny each and every allegation in the form alleged in paragraph number "69", "70", "71", "72" and "73" of plaintiffs' Verified Complaint, except admits FE MURPHY, M.D. participated in the medical care rendered to plaintiff FREDDIE PIERRELOUIS.

13. Defendants deny each and every allegation contained in paragraphs numbered "83", "84", "85", "86", "87", "88" and "89" of plaintiffs' Verified Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION  
LACK OF INFORMED CONSENT**

14. Defendants repeat, reiterate, and reallege each and every response set forth in the Verified Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "90"

15. Defendants deny each and every allegation contained in paragraphs numbered "91", "92", "93", "94", "95", "96", "97" and "98" of plaintiffs' Verified Complaint.

**AS AND FOR A THIRD CAUSE OF ACTION  
ON BEHALF OF THE FATHER**

16. Defendants repeat, reiterate, and reallege each and every response set forth in the Verified Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "99"

17. Defendants deny any knowledge or information thereof sufficient to form a belief as to the allegations set forth in paragraphs numbered "100" of plaintiffs' Verified Complaint.

18. Defendants deny each and every allegation contained in paragraphs numbered "101" and "102" of plaintiffs' Verified Complaint.

**AS AND FOR A FOURTH CAUSE OF ACTION  
VICARIOUS LIABILITY**

19. Defendants repeat, reiterate, and reallege each and every response set forth in the Verified Answer above with the same force and effect as if set forth herein at length, as alleged in plaintiffs' Verified Complaint in paragraph number "103"

20. Defendants deny each and every allegation in the form alleged in paragraphs numbered "104" and "105", of plaintiffs' Verified Complaint.

21. Defendants deny each and every allegation contained in paragraphs numbered "106 and "107" of plaintiffs' Verified Complaint.

**AS AND FOR A FIRST COMPLETE AND AFFIRMATIVE DEFENSE**

22. Pursuant to Article 14-A of the CPLR, plaintiffs' claim for recovery of damages against the defendant shall be diminished in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

**AS AND FOR A SECOND COMPLETE AND AFFIRMATIVE DEFENSE**

23. Any claim based upon lack of informed consent is barred by the provisions of Public Health Law § 2805(d)4.

**AS AND FOR A THIRD COMPLETE AND AFFIRMATIVE DEFENSE**

24. Defendants hereby invoke the provisions of CPLR Article 16 and request that the jury herein be charged accordingly.

**AS AND FOR A FOURTH COMPLETE AND AFFIRMATIVE DEFENSE**

25. Upon information and belief, plaintiff's economic loss, if any, as specified in CPLR §4545 was replaced or indemnified in whole or in part from collateral sources and the answering defendant is entitled to have the Court consider the same in determining such damages as provided as CPLR §4545.

**AS AND FOR A FIFTH COMPLETE AND AFFIRMATIVE DEFENSE**

26. That the causes of action herein as to ESTHER BEKRITSKY, M.D., GAVIN JOFFE, M.D., ERIC SILVA, M.D., and FE MURPHY, M.D., may not be maintained because they are barred by the Statute of Limitations.

**WHEREFORE**, defendants, ESTHER BEKRITSKY, M.D., GAVIN JOFFE, M.D., ERIC SILVA, M.D., and FE MURPHY, M.D., demand judgment dismissing the plaintiffs' Verified Complaint herein as to the answering defendants, together with costs, interest and disbursements of this action.

Dated: White Plains, New York  
February 6, 2008

Yours, etc.,



Richard C. Baker (RB-0143)  
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